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For Pelisamen

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN MARIANA ISLANDS

UNITED STATES OF AMERICA,)	Criminal Case No.: 08-00001
)	
Plaintiff,)	
)	
vs.)	MEMORANDUM IN SUPPORT OF MOTION
ARRIOLA, JOSEPH ALDAN and)	TO MODIFY BAIL APPOINT A THIRD
PELISAMEN, LUIS KAIPAT,)	PARTY CUSTODIAN AND TO SET
)	CONDITIONS FOR PRE-TRIAL
Defendant)	RELEASE
)	
)	
)	

I.

RIGHT TO PRE-TRIAL RELEASE IS FUNDAMENTAL

The right to bail is fundamental to our system of law.
Herzog v. United States, 75 S.Ct.349, 359, L.Ed 1299(1999).

The law favors the release of defendants pending determination of guilt or innocence. Deprivation of liberty pending trial is harsh and oppressive in that it subjects persons whose guilt has not yet been judicially established to economic and psychological hardship, interferes with their ability to defend themselves, and, in many cases,

1 deprives their families of support. Moreover, the
2 maintenance of jailed defendants and their families
represents a major public expense.

3 3A CHARLES ALAN WRIGHT, FEDERAL PRACTICE & PROCEDURE, 761
4 (1982), quoting ABA Standards for Criminal Justice, 2d ed. 1980,
10-1.1.

5 "The system of bail is designed to reconcile the
6 conflicting interests of the accused to freedom during trial and
7 pending judicial review and of society to guard against the
defendant's fleeing or hiding himself."

8 Id, citing *Bandy v. United States*, 81 S. Ct. 197, 51 L.Ed. 218
9 (1960) (opinion of Circuit Justice Douglas).

10 "The office of bail in a criminal case is to secure the due
11 attendance of the party accused to answer the charge, submit to
12 trial, and respond to the judgment of the court."

13 Id, citing *Ex parte Milburn*, 9 Pet. (34 U.S.) 704, 710, 9 L.Ed.
280 (1935).

14 II.

15 STANDARD OF PRE-TRIAL RELEASE

16 Standards of pre-trial release are set forth in the Bail
17 Reform Act of 1984, 18 U.S.C. §§ 3141, et seq. Pre-trial release
18 is mandated under the least restrictive conditions that will
19 reasonably assure the presence of the person and the safety of
20 the community.
21

22 18 U.S.C. § 3142(c)(2); *United States v. Motamedi*, 767 F.2d
23 1403, 1405 (9th Cir. 1985).
24
25

1 "Any doubts regarding the propriety of release should be
2 decided in the Defendant's favor, and release should only be
denied in rare circumstances."

3 *United States v. Gebro*, 948 F.2d 1118, 1121 (9th Cir. 1991).

4 The imposition of a financial condition on release cannot
5 result in pre-trial detention.

6 18 U.S.C. § 3142(c) (2).

7
8 Several factors must be taken into account by the Court in
9 determining whether there are conditions of release that will
10 reasonably assure the appearance of the Defendant and the safety
11 of the community.

12 18 U.S.C. § 3142(g).

13
14 These factors are: (1) the nature and seriousness of the
15 offense with which the Defendant is charged; (2) the weight of
16 the evidence against the Defendant; (3) the Defendant's
17 character, physical and mental condition, family and community
18 ties, past conduct, history relating to drug and alcohol abuse,
19 and the Defendant's criminal history; (4) the nature and
20 seriousness of the danger to any person or to the community that
21 would be posed if the Defendant were released; (5) whether the
22 Defendant can successfully rebut the presumption arising from 18
23 U.S.C. §3142(e) (3).
24
25

1 A. The Nature of the Charges.

2 While the Act allows the Court to consider the nature of
3 the offense, it does not permit or require a pre-trial
4 determination of guilt. The nature of the charge can only be
5 considered in determining the likelihood that the Defendant will
6 appear as ordered or whether he poses a threat to any person or
7 to the community.

8
9 *Supra, Motamedi, 767 F.2d at 1408.*

10 The charges against Luis Pelisamen involve wire fraud,
11 money laundering and conspiracy. He presently is without funds
12 and unable to purchase an airline ticket or arrange otherwise to
13 flee this jurisdiction. He intends to cooperate with the AUSA
14 and FBI and provide all the information he has regarding the
15 crimes charged against himself and his co-defendant.

16
17 There is no indication that the Defendant would flee the
18 jurisdiction if released

19
20 B. The Weight of the Evidence.

21 The least important of the factors that the Court must
22 consider is the weight of the evidence.

23 *Supra, Motamedi, 767 F. 2d 1408.*
24
25

1 This factor neither requires nor permits a pre-trial
2 determination of guilt. Id. This factor can only be considered
3 on the issues of the likelihood that the Defendant will appear
4 as ordered and whether he poses a danger to any person or to the
5 community.

6 Counsel believes at this early point in the process that
7 the evidence possessed by the Prosecution is weighty. However,
8 the Defendant is not charged with a crime of violence and he is
9 unlikely to perpetrate or attempt to perpetrate similar offenses
10 inasmuch as he is no longer an Administrator of an Estate and
11 thus is not in a position to do so.
12

13
14 C. Defendant's Ties to the Community.

15 Factors to consider are the length of time the Defendant
16 has resided in the Commonwealth, whether he has been employed,
17 whether he owns any property in the Commonwealth and whether he
18 has any relatives who are United States citizens or residents.
19 *United States v. Townsend*, 897 F.2d 989,995(9th Cir. 1972).
20

21 The Defendant Pelisamen was born and raised in the CNMI and
22 has never lived elsewhere. He is married and resides in a family
23 compound in Chalan Pale-Arnold, Saipan consisting of 6 houses
24 occupied by his three brothers and their families, his sister
25

1 and his daughter and himself and his spouse. He has strong ties
2 to the community. In the 1990's he was employed by the CNMI
3 Department of Environmental Quality (DEQ). He developed "Chronic
4 Lung Disease" and since that time his only income has been from
5 disability retirement from the CNMI Retirement Fund.

6 Luis Pelisamen is a U.S. Citizen

7
8 D. Danger to Any Person or to the Community.

9 It is the governments burden to show that the Defendant
10 possesses a propensity for violence or that he has a history of
11 violence.

12
13 *United States v. Flores*, 856 F. Supp. 1400, 1403 (E.D.Cal.
14 1994).

15 If such is shown by the government the major concern is
16 whether there are any conditions that the court can impose that
17 will deter any violent tendencies shown.

18
19 There is nothing in Luis Pelisamen's record to indicate a
20 propensity for violence.

21 **III.**

22 **RELEASE SHOULD NOT BE DENIED ON GROUNDS OF RISK OF FLIGHT OR**
23 **DANGEROUSNESS**

24 A. Defendant Luis Pelisamen does Not Pose a Flight Risk.

25 It is the prosecution's burden to show by a preponderance

1 of the evidence that no terms and conditions are likely to
2 ensure the appearance of the Defendant.

3 *Supra, Motamedi*, 767 F.2d at 1406-07.

4 In evaluating flight risk, the fact that a defendant may
5 have the opportunity to flee is insufficient to justify
6 detention.

7
8 *United States v. Chen*, 820 F.Supp. 1205 (N.D. Cal. 1992).

9 Given the prohibition of § 3142(e) and (f)(1) the Defendant
10 must overcome the rebuttable presumption that no condition or
11 combination of conditions will reasonably assure the appearance
12 of the Defendant and/or the safety of any other person or the
13 community.

14
15 In making a determination pursuant to the factors listed in
16 § 3142(g) this Court should find that it can establish terms and
17 conditions which can reasonably ensure Defendant's presence in
18 the Court when ordered. The Court may order house arrest.

19
20 *U.S. v. Traitz*, 807 F.2d 322 (3d Cir. 1986), cert. denied, 493
21 U.S. 821 (1989).

22 The Court may order curfew restrictions, limitations on the
23 operation of motor vehicles and travel, and communication
24 restrictions.
25

1 See 18 U.S.C. § 3142(c); *U.S. v. Miller* 625 F.
2 Supp.513(D.Kan. 1985).

3 The Court may order placement of an electronic monitoring
4 device on Defendant. The Court may even order that should the
5 Defendant fail to appear the trial may go forward in his
6 absence, as a condition of release.

7
8 *U.S. v. Thomas*, 667 F.Supp. 727(D.Or. 1987).

9 Release of the Defendant to his daughter, Shana Wabol
10 Pelisamen, as Third-Party Custodian , surrender of Defendant's
11 passport, house confinement or curfew, electronic monitoring,
12 random drug testing, and such other conditions as the Court may
13 deem necessary are more than sufficient to ensure that the
14 Defendant will appear and will not flee the jurisdiction.

15
16 Shana Pelisamen is the 28 year old daughter of the
17 Defendant. She lives with her companion, Jordan Ongklungel and
18 their two children and two children of the Defendant in a two
19 bedroom, one bath, semi-concrete house. Shana Pelisamen will
20 accept the responsibility of supervising her father and believes
21 that he will obey her instructions. She tells counsel that he
22 will have a bedroom to himself and she has just had a telephone
23 installed in the house so that he can wear a monitoring device.
24
25

1 She promises to alert the court immediately if her father
2 violates any condition of bail. It is recommended that the
3 Defendant be released to his daughter as third party custodian
4 on an unsecured bond, that he be confined to his daughter's
5 house and wear a monitoring device.

6
7 B. Defendant Luis Peliseman is Not a Danger.

8 The Defendant is not a danger to the community. Releasing
9 the Defendant to a third-party custodian and the imposition of
10 conditions, as suggested, will be sufficient to protect persons
11 and the community from any danger or threat of danger.

12
13 IV.

14 CONCLUSION

15 Defendant, Luis Pelisamen, is a U.S. citizen and has
16 resided in the Commonwealth his entire life. There is nothing in
17 his record or present circumstances that would suggest that he
18 is a flight risk or a danger to any person or to the community.
19 The Court cannot pre-judge the case and deny pre-trial release
20 on the basis of the charges and the evidence against the
21 Defendant, provided he overcomes the presumption of § 3142(e)
22 and (f). It is submitted that his long term residence in the
23 CNMI, the presence of his children and grandchildren all living
24
25

